

19104-017 Chancery Causes W. P. Allen & vs Levi Howard
Lee Co.

CA - Contract Dispute
T-Property

To the Hon. H. A. W. Sherr, Judge of the
Circuit Court of Lee County, Virginia,

Your orator and oratrix W. P. Allen and Mary
Allen, humbly complaining sheweth unto the
unto the Court:

That about the year 1795 the Commonwealth
of Virginia, granted to one Nathan Field a large
tract of land containing 7080 acres, a part of which
said land is located in Kentucky, and the residue
of 4337 ^{acres} is located in Lee County, along the south
side of Cumberland Mountain. About the year
1840, under decree of the Circuit Superior Court
of law and chancery for Lee County, the said tract
of land was sold for the taxes due thereon, by
Claiborne Anderson Commissioner of forfeited and
delinquent-lands for Lee County, and the same
was purchased by John M. Beatty, and Robert M. Ely,
and thereafter, to wit, on the 17 day of August-1842
the said Claiborne Anderson Commissioner as aforesaid
by deed duly acknowledged and duly recorded in the
Clerk's office of the County Court of Lee County, conveyed
that portion of said tract which lies in Lee County,
to the said Beatty and Ely, the purchasers thereof.
The said John M. Beatty sold and conveyed his un-
divided interest in said lands to one J. H. Tyler, who
dying intestate, the said interest-purchased by him,
passed by descent to his son and heir H. C. Tyler,
and was sold and conveyed by him in turn
to one John G. Newlee. The said Newlee becoming
entrained in debt, his interest-was sold under
decree of the Circuit Court of Lee County, and J. W.
Divine became the purchaser thereof.

1 The said Robert M. Ely died seized of his
2 undivided half interest in said land, which
3 passed by descent to his only son and heir,
4 William S. Ely. Several years after his father's
5 death, the said William S. Ely himself died, seized
6 of said land, leaving an only son and heir Robert-
7 M. Ely, to whom passed by descent the title to said
8 land. Several years afterwards, the said Robert-
9 M. Ely, ^{last of said} died seized of said lands, leaving three
10 daughters, his only heirs, to wit: Maggie, Anna, and Mary
11 Ely, (the last named being your oratrix and who
12 intermarried with your orator W. P. Allen, to whom
13 the title to the said undivided half of said land passed
14 by descent.

15 In the year 1886, the said J. W. Divine brought
16 suit against the said heirs of the said Robert M. Ely,
17 for the purpose of having said lands partitioned,
18 under the style of "J. W. Divine vs Margaret Ely et al,"
19 to which suit reference is made, and prayed to be read
20 as a part of this bill. Under a decree in said cause
21 the said lands were partitioned and assigned, the
22 western end of said lands, ^{by said J. W. Divine} and the eastern end to
23 the said children and heirs of the said Robert M. Ely,
24 and the said partition duly recorded in the Clerk's
25 office of County Court of Lee County.

26 In the year 1898, under the style of Maggie Ely vs Mary
27 Ely vs Anna, ^{Ely} suit was brought in the Circuit Court
28 of Lee County, to have all the lands of which
29 Robert M. Ely died seized partitioned among his
30 said three daughters, and under a decree in said
31 suit the said lands were duly partitioned and
32 assigned, as will be seen by examination of the

papers filed in said last-mentioned cause, to which
reference is made and it is prayed that the same be
read and treated as a part of this bill.
By reference to said partition last-mentioned, it
will be seen that that portion of the Fields
grant of land which was assigned the heirs
of Robert M. Ely, in the case of J. W. Divine vs.
Margaret Ely et al, was divided into nine parts
or lots, numbered as follows, to wit: Lots No. 6, 14, 24,
23, 14, 6, 9, 16, 27. Now it will be seen ^{by referring to said partition} that lots
No. 14, 16, 16, were assigned to your oratrix, Mary Ann
Ely, but Lot No. 16 which is bounded as follows:
Beginning at (y) a large poplar and chestnut-oak corner
to Lot No. 9, and on the Fields line, and with the
same N 74½ E, 186 poles, to two large chestnuts on top of a
small rocky spur near a haul road, thence N. 100 poles
to a stake (Note this line passed through the west-end of a
clearing, and over a large high rock at 60 poles) thence N 7½ E
180 p to (x) top of mountain and with the same S 70 W, 136
poles, S 50 W, 99 p, to (z) corner of Lot No 9, and with the line
of the same S 230 poles to the beginning, containing 276
acres, more or less, is mountain dower lands, assigned as
a part of the dower of the widow of the said Robert M. Ely,
which said widow is still living and in possession of said
Lot of land, No. 16, ofore said, and your orator and oratrix
is entitled only to the reversion of said lands, and not
to the immediate possession thereof.

Now your orator and oratrix aver that said
land is valuable principally for the fine timber
and minerals thereon, and any thing that would destroy
the said timber thereon would work a permanent and
irreparable injury to said lands, such as would

1 not be susceptible of perfect pecuniary compensation.
2 But your orator and oratrix aver and charge that
3 One Levi Howard has been and is now entering
4 upon said ^{land of} ^{M. 16,} lands, exercising acts of ownership thereon,
5 felling and destroying trees, hauling off timber, and
6 peeling tan-bark, and hauling the same away, thereby
7 working permanent and irreparable injury to said
8 lands, and such injury ^{your oratrix and orator aver} as is not susceptible of perfect
9 pecuniary compensation, and which your orator and
10 oratrix may not obtain adequate satisfaction in
11 the ordinary course of law. While your oratrix
12 and orator's title to said land is perfect, yet they
13 cannot effect the trespasser, as they are not
14 entitled to the possession, but only ^{of said lands} the reversion.
15 And unless the said Levi Howard is enjoined,
16 inhibited and restrained from committing said
17 trespasses ^{and acts of waste} and entering upon said lands, before
18 your orator and oratrix will get possession, the
19 said lands will probably be rendered worthless.

20 In consideration whereof, and for as much
21 as your ^{orator and} oratrix is remediless save in a court of
22 equity, they pray that the said Levi Howard
23 be made a party defendant to this bill, and required
24 to answer the same in his own proper person, but not
25 on oath, the same being hereby waived; that he
26 may be enjoined, restrained, and inhibited from,
27 entering upon said lands, or exercising any acts of owner-
28 ship thereon, from cutting or felling timber or trees thereon,
29 or from hauling any timber, trees, wood, or tan bark
30 from said lands, or peeling ^{timber} tan-bark; that judgment
31 be entered against ^{him} for damages already done by him
32 to said lands; That proper process issue, and all

proper orders be made, and that upon a final hearing the injunction be made perpetual; and that all ^{such} other further and general relief may be afforded your oratrix and orator, as in the premises may be just and right. And your orator and oratrix will ever pray etc,

W.P. Allen and Mary Allen

J. C. Noel, p. q.

Virginia, Lee County to wit:

J. J. H. Skaggs a justice of the peace for the county and state aforesaid, do certify that J. C. Noel, attorney for W.P. & Mary Allen, personally appeared before me in my county aforesaid and made oath ^{has reason to believe and does} that he believed that all the allegations contained in the foregoing bill are true.

Given under my hand this 10 day of May 1900.

J. J. Skaggs J.P.

This cause came on this day to be heard in vacation on the plaintiffs bill of complaint, and upon said hearing an injunction is granted in accordance with the prayer of this bill, restraining the defendant from further entering upon the lands mentioned in said bill and known as lot No. 16, from exercising any acts of ownership thereon, from cutting or felling any timber or trees thereon, from hauling any timber, tree wood or tan-bark from said lands, and from peeling tan-bark on said lands. But before this injunction shall take effect the said Mary Allen and W.P. Allen, or some one for them, shall enter into acknowledged bond before with good security

1 before the Clerk of the circuit-court of the county
2 of Lee in the penalty of \$2000, conditioned to
3 pay all such costs and damages as may be
4 awarded against them in case this infraction
5 shall be dissolved. This the 15th day of May 1900.

6
7
8 To Clerk of Lee } H A W Stuber Judge
9 Co. Circuit Court } of Lee Co. Circuit Court

W. P. & Mary Allen
vs Bill on Chm.

Levi Howard

1900, 2nd May Rules Hill
filed & presented and
Deeze Nisii
" 1st June Rules taken
the last Monday in
May Deeze Nisii
Confirmed & Cause set
for hearing

W. P. & Mary Allen. Plff
vs
Levi Howard, Defs.

This cause came on this day
to be heard upon the papers
formerly read in this cause
and was argued by counsel.
And it appearing to the Court
that the matters in controversy
have been settled by the parties.
It is adjudged ordered and
decreed that - the plaintiffs
recover their costs of the defendant,
for which execution may issue.
And nothing further appearing
to be done in the case, this
cause is stricken from the
docket.

Dr P. Y Mary Allen
vs J Decker final
Levi Howard

Enc C.B. No 7, p 408

Enter this decree.
this Feb. 17, 1904.

H. A. W. Stearns
Judge